



MINUTES OF THE LAND RECLAMATION COMMISSION MEETING

January 27, 2005

Vice Chairman Hugh Jenkins called the meeting to order at 10:00 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

Commissioners Present: Hugh Jenkins; Mimi Garstang; Bob Ziehmer; Kevin Mohammadi; and Dr. Gregory Haddock.

Staff Present: Larry Coen; Tom Cabanas; Richard Hall; Mike Larsen; Larry Hopkins; Andy Reed; Mike Mueller; Bill Zeaman; and Shirley Grantham.

Others Present: Rich AuBuchon, Attorney General's Office; Perry Pursell, Office of Surface Mining; Jim Rolls, Associated Electric Coop., Inc.; Steve Rudloff, Missouri Limestone Producers Association; Mikel C. Carlson, Gredell Engineering; Chris Schwedtmann, Midwest Environmental Consultants; James R. Wilson; Steve Foster; and John Menefee.

MINUTES OF THE NOVEMBER 17 AND DECEMBER 17, 2004, MEETINGS

Dr. Haddock made the motion to approve the Minutes as written. Ms. Garstang seconded; motion carried unanimously.

ABANDONED MINE LAND ACTIVITIES

AML Status Report (Attachment 1). Mr. Cabanas stated that overall work has been slow during the past months because of bad weather. Work at the Perche Creek Project is now complete with some tree planting yet to be done. Recent maintenance was performed at a pond where a spillway tube had to be repaired.

Mr. Cabanas stated regarding the Miller's Creek Project, the two impoundments have been eliminated; and rough grading is now complete. Final grading and installation of terraces and rock crop structures are awaiting drier field conditions. It is anticipated final seeding will be completed this spring.

Mr. Cabanas noted with regard to non-coal shaft closures, the Program received several public requests for assistance on suspected mining-related open shaft problems in the past two weeks in the Jasper County area. Some of these may not be mine related. The Program has requested the assistance of DNR, GSRAD, to make that determination on several. One of these inspected by Program staff involved a 10-foot wide mine opening

found under the foundation of a house in the City of Aurora. The staff is assessing this situation and looking at possible solutions. Mr. Cabanas stated the staff will be performing more lead and zinc shaft closures this year by prioritizing their severity.

Mr. Cabanas stated in the area of bond forfeiture, projects have been completed at Missouri Mining in Putnam County at Pits 17, 15, 14 North, and 14 South. Ongoing maintenance will be performed during the spring as the weather allows. Work will also be done at Pit 12 at Missouri Mining involving reestablishment of a breached pond along with repairing some associated erosion problems.

Mr. Cabanas stated with regard to the surety reclamation projects, reclamation at the Midwest Coal, Tiger Mine, is near completion, and the site looks very good. Most of the prime farmland and nonprime soils have been replaced. This week, the contractor blasted the highwall at the final water impoundment in preparation for final grading. It is anticipated that completion of all grading and topsoil replacement will be done by this spring if the weather allows.

Mr. Cabanas stated the staff has been informed by the Attorney General's Office that there are complications with initiation of reclamation at the Riedel Energy, Perry Mine, located in Ralls and Monroe Counties. The State of New York has taken over the business operations of Frontier Insurance Company. The staff has been informed that the State of New York will not hire a contractor to perform reclamation at the Perry Mine, as was previously agreed, and have made a preliminary offer of a cash settlement.

PERMIT ISSUES

Request for Hearing – Pettis County Properties Company, LC, Transfer

Application (Attachment 2). Mr. Larsen stated the Program received a permit transfer application proposing to transfer an existing limestone operation located on 81.5 acres in Pettis County. This transfer is being required due to a change in ownership. The operator intends to construct a landfill in the existing quarry and has no plans of mining the site and wish the permit to be issued for "reclamation only." The company published the required public notice in a newspaper that has circulation in the area and sent by certified mail a notice of intent to operate a surface mine to the appropriate county officials, as well as adjacent landowners. The notice stated that the site will be in operation until September 21, 2030. During the public comment period following the initial publication of the public notice, the staff received one letter concerning this proposed application. The issues of concern in the letter were property damage from blasting, dust, noise, and siltation. Pettis County Properties Company, LC, has completed all the requirements to obtain a permit transfer under the Land Reclamation Act. Therefore, after consideration of the issues and comments stated in the letters, it is the Staff Director's recommendation

to issue the permit transfer involving the site located in Pettis County. Mr. Larsen stated the recommendation for approving this application is based on the conclusion that the public's health, safety, or livelihood will not be unduly impaired by the issuance of this permit. The balancing test stated in the declaration policy of the Land Reclamation Act does not weigh against the surface mining of minerals in this instance. Therefore, the recommendation is to approve this application.

Ms. Garstang noted that she did not remember an instance such as the above coming before the Commission in the past where, if a quarry site is going to be converted or permitted as a landfill, that the company comes before the Commission for a reclamation permit. Is this standard practice?

Mr. Larsen stated it is not. This doesn't happen very often. The company who is receiving transfer from the existing company does not wish to mine limestone at this site. Their plans are to proceed with a solid waste sanitary landfill application and use the existing excavation for that purpose. Since there will be no mining involved nor additional lands disturbed for surface mining, and the staff has that in writing from the receiving company, then the permit will be issued for reclamation only. Blasting at the site will be very limited in the future, according to the receiving company's letter. The company needs the option to shape benches and unused limestone in the quarry so as to make the site suitable for the landfill.

Mr. Coen suggested that Mr. Larsen explain why the company did not just go ahead and terminate the LRP permit and get a landfill permit.

Mr. Larsen stated the existing owner and operator wants out of the permit. The receiving company has worked this out with the existing owner to receive his mining permit. The company that is receiving the permit will work with the Solid Waste Program to get their permit for the landfill, and only when trash is actually starting to go into that hole, is the Commission then obligated to release the bond. So this reclamation only permit is an intermediate step between the current operation and commencement of landfill operations.

Ms. Garstang asked when did the mining at the site cease?

Mr. Larsen replied several years ago, at least at this site. There is another quarry immediately to the north of this particular site owned by LaFarge, which is an active mining operation.

Mr. Steve Foster stated he is the immediate neighbor to the proposed landfill site. He stated his concerns are that (1) if the definition of mining is the removal of rock, which may be true, his understanding is that between his property and the proposed landfill,

there is about 30-40 acres. Mr. Foster stated that Pettis County Properties is planning to mine that. His concern with doing that is that he has a 7-acre lake and that the company has not provided any means to prevent runoff from the mining operation from running into his lake. The previous owner has a history of dumping on his land and land owned by Mr. Wilson. They have not been good neighbors before. He noted he did not see anything in the letter that assures him that the company will not dump tons and tons of materials on their properties again. (2) The current landfill will keep the trash on the landfill. He stated he would like some assurances from the new owners in writing to protect he and others from having the plastic bags in the trees and in their yards as soon as landfill operations are started. Mr. Foster stated he does have a row crop operation on his property and that he has had to go and pick up the company's trash regularly.

Mr. Jim Wilson stated he also owns land adjacent to the proposed landfill. The prior operation would allow silt to run through his property and into a small stream, causing the water in the stream to back up. He stated the new permit should be held up until the current operator cleans up the mess it has made. In the mid 1990's, the current company had a problem and was supposed to put in a settling pond, which did help. He did not feel there would be any sedimentation now. The existing sedimentation is still there.

Mr. Larsen stated complaints were received by the Missouri Department of Conservation and DNR's Water Protection Program in 1990-1991. It is true that at that time, there was a severe siltation problem coming from a portion of the current operator's quarry that was pre-law. This quarry was the first operation to get a permit in 1972. The quarry had been in operation prior to that time, so there are pre-law areas on this quarry. The Land Reclamation Act has no jurisdiction over pre-law areas as far as sediment and siltation. The Water Protection Program does. In the early 1990's, inspections were done in response to citizens' complaints and there was a problem. The creek was choked with sediment, and there was no sediment control at this time. The investigation of the complaints resulted in the issuance of a violation to, at that time, Menefee Construction Company, requiring them to construct a siltation basin or a sediment pond and obtain an NPDES permit with fairly strict limitations regarding sediment released from the site. Those measures were taken by Menefee in 1995. The sediment basin was constructed which stopped any further sediment from the pre-law area going out into the stream. A storm water permit was issued to the company that had limitations on it. Since that time, it was felt that the controls were adequate, they were in place, and that the best course for the creek was to allow it to flush itself out rather than to put heavy equipment in the creek to remove the sediment. So, the violation was written for noncompliances and abated in 1995. The Land Reclamation Program was at the site one week ago to look at the eastern flank of this mining operation because that is where the sedimentation had been coming from. The staff wanted to make sure that it had an up-to-date assessment of the site, whether all sediment was controlled, and whether there were any visible problems with

regard to siltation or sediment control at the site. Mr. Larsen stated no problems were noted during this inspection. Since 1995, Mr. Larsen stated he was not aware of any other violations at this site. All of the areas of this mine site under the jurisdiction of the Land Reclamation Commission have adequate sediment control, adequate grading, and adequate revegetation to control erosion. The sediment pond is the main feature of this. It is rather large and has been very successful in controlling future sediment.

Mr. Jenkins asked if either of the two landowners had contacted any other state agencies that will be overseeing this site with regard to the trash problem and the sediment problem?

Mr. Foster stated it is not the current landfill. He has written various letters to various agencies regarding the trash that has blown onto his property. He stated he and Mr. Wilson would like to have some assurances that there won't be any more plastic sacks in every tree on the property.

Mr. Mohammadi asked if he understood the landowners' concerns correctly, they were not concerned about sediment that has been left behind, but more concerned about the future operation.

Mr. Foster stated he was concerned about sediment going into his lake.

Mr. Mohammadi stated that under the clean water law, if a company is disturbing more land, a land disturbance is required from the Water Protection Program. The company has to comply with the terms of that permit, making sure there is no erosion from the site. That is when the landowner would have his concern addressed.

Mr. Mohammadi asked Mr. Wilson if he thought there was a way that is practical to go and remove the sediment without damaging the environment more and how would he suggest that be done?

Mr. Wilson stated he felt what should happen is to get the stream running with a minimal of disturbance to the land around it, and that, eventually, the running water will clear out the streambed itself. The sediment that is on the side of the stream on what was once flat land, there would be more damage done to try to get it out than it would do good. He stated his concern is to get, where the water comes from the settling pond, get that sediment out of the stream with minimal disturbance to get it running that it will eventually clean itself out.

Mr. Mohammadi asked whether Mr. Wilson was suggesting actually removing the sediment or moving the sediment around in order to get the water flowing?

Mr. Wilson stated he did not think it would be practical to try to remove the sediment. At the upper portion where it comes off the mining property, that has cleaned itself out; and the sediment pond has kept more from coming in. The flowing water has cleaned it out.

Mr. Mohammadi asked Mr. Larsen if the staff had contacted Pettis County Properties to consider this cleanup and what their reaction has been?

Mr. Larsen responded that he did not talk with the company directly but did speak with their consultant. He asked if they would take a look at this site again and see what they would be willing to do. Mr. Larsen stated it was his understanding that the company visited the site and felt that the best thing to do was to simply leave it alone. The company did not see that there was that much of a problem.

Mr. Mohammadi stated that he felt that with a minimal amount of work, everybody can be happy. Pettis County Properties could do a minimal amount of work to move the sediment on to where it is going and it will clear itself out eventually.

Dr. Haddock noted that Mr. Foster stated that he didn't ever receive a notification letter originally. Is he a direct adjacent landowner, or was that an oversight?

Mr. Larsen stated he did not believe it was an oversight, but he did not review the application personally. To his knowledge, the reviewer was satisfied that the public notification had been met.

Mr. Coen stated there is a reference to mining of soil. Mining of soil is not part of what goes into a Land Reclamation Program permit. Any landowner can remove soil without a mining permit. A land disturbance permit would be needed. That is probably why Mr. Foster was not notified because that activity of soil removal is not considered as part of this permit.

Mr. Larsen noted that the map indicates boundaries of the permit area. It would be landowners that are adjacent or contiguous to that boundary that would need to receive notification.

Mr. Chris Schwedtmann, Midwest Environmental Consultants, stated he represented Pettis County Properties, both the existing owner, in some capacity, but mostly the owner who the Commission would be transferring the permit to, who is going to operate the landfill, once this permit is transferred and they start to do some of the dirt work they need to do. He suggested the Commission view the pictures to address the concerns voiced by the Commission what it would take to clean some of the sediment out. Depending on the status, there is a good possibility that the company would have to get a

Corps of Engineers permit to get back in there because of how it has been reestablished. Mr. Schwedtmann noted that if the Commission can look at how it has revegetated itself, the Commission might be able to determine whether it feels there would be more environmental impact or less to do what needs to be done in there. The mining operation at this site has ceased. If there is dirt work or any earth removing in the area, it is from another company, LaFarge, running their operation to the north. Pettis County Properties has not operated equipment at this site other than preparing some of the site for monitoring wells for the landfill permit that requires ground water baseline data, making an entranceway for that. That is all under the public notice in the beginning processes of the landfill permit. Essentially, all that Pettis County Properties is asking to do in the Commission's permit application is to transfer the 81.5 acres that are currently bonded, which are currently some of the overburden that is at the site and some of the pit areas that remain that were not part of the pre-law bond release done several months ago. That is basically all that is left. Mr. Schwedtmann stated all of the drainage either goes to that sediment pond or back to the pit. There is no discharge from the areas that are under bond off the site of that 81.5 acres.

Mr. Reed stated that his inspection on January 19 revealed there was a channel in the center that does flow. All of the flow coming from the affected areas is caught by the sediment pond.

Mr. Larsen noted there is a large ag lime pile at the site. Ag lime is finely crushed limestone. The primary source of sediment 10 years ago was from this pile. He stated he did not think that the pile has moved in the 10 years. Before the basin was built in the early 1990's, this was a problem. This is the type of material that found its way down to the creek. The sediment pond is about ten years old now and has been very effective in ceasing any future problems.

Mr. Schwedtmann stated that Pettis County Properties asked him to look at the site and assess it. He stated that based on the fact that the Water Protection Program closed the issue in 1995 and stated that the violations had been abated and since there have been nine years of revegetation, to get back in there, there are probably permits that will have to be obtained because it is not on the permitted area. That would be a permit that Mr. Wilson would have to get to allow someone to go in and dig in that stream and move sediment around. It is possible that the Corps of Engineers would also have jurisdiction over this area now. To hold up a transfer of a Land Reclamation Program permit that is no longer impacting this issue, one that both the Water Protection Program and the Land Reclamation Program consider closed, would not be fair to the new landowner to have to do that and hold up his permit for something that happened, at that point, that has naturally rectified itself. He stated he felt the violations from nine years ago had been rectified. There should be no responsibility to the new owners.

Dr. Haddock made the motion to follow the Staff Director's recommendation to transfer the permit. Ms. Garstang seconded; motion carried unanimously.

Mr. Wilson asked whether he needed to talk with someone in the Water Protection Program?

Mr. Mohammadi stated the issue is basically closed. He suggested that he could look at the historical information in his office regarding the enforcement that occurred. If the case has been closed, his office would consider it to be closed.

Mr. Larsen suggested that a facility such as a landfill does have fairly strong sediment controls in place in order to obtain a permit. In the future as the landfill begins operation, if problems occur with regard to the sediment control, Mr. Wilson should contact the Department's Solid Waste Management Program.

Because Ms. Garstang had to leave shortly for another meeting, and while waiting for her alternate, Mr. Bill Duley, agenda items were rearranged to accommodate action on certain items.

OTHER BUSINESS

Commissioners' Core Work Group Recommended Operating Policies (Attachment 3). Mr. Coen stated that an updated draft of these policies had been presented during the last two Commission meetings. He felt that the current draft incorporated all of the concerns the Commission had. If the Commission has no further corrections that need to be made, he recommended that the Commission adopt these policies.

Dr. Haddock made the motion to adopt the current draft of the "Commissioners' Core Work Group Operating Policies" that were outlined and written by the Core Group April 30, 2004, for the Missouri Land Reclamation Commission. Ms. Garstang seconded; motion carried unanimously.

Ms. Garstang left at approximately 10:45 a.m.

BOND RELEASES

Summary of Industrial Minerals Bonds Released by Staff Director (Attachment 4).

Mr. Larsen stated the Staff Director has reviewed, evaluated, and approved several Industrial Minerals bond release requests as presented in Attachment 4. The releases were for the following companies: Larry Wolfmeier, A. P. Green Refractories, Harbison-Walker Refractories, Big Creek Quarry, Inc., Continental Cement Company, L & W Quarries, Morgan Materials, Hilty Quarries, Inc., Interlochen Corp.-Sikeston Sand and Gravel, and Jess Vogler.

OTHER

Activities Report as Required by the Land Reclamation Act (Attachment 5). Mr. Coen presented this report to the Commission. He noted that with a very small balance of the Industrial Minerals fund, the Program will have to decide how to deal with that. To explain why the expenses are up so much, in previous years, the Industrial Minerals Unit has not had full staff, usually one or more vacancies. During the past year, the unit has had a full staff. In addition, the "indirect costs" for the Department have risen. These are funds the Land Reclamation Program has to give up to fund overhead for the entire Department. The last reason for the increase is that the expense of doing inspections, which requires hotel stays, use of vehicles, etc., is larger with the full staff than has been with not a full staff. The ability by the Program to approve Industrial Minerals bond releases rather than having to bring every one before the Commission has been working very well. It doesn't require the operators to wait until the next Commission meeting to get their release. They thus receive it immediately.

Mr. Duley arrived at approximately 11:00 a.m.

ENFORCEMENT

Hearing Request on Formal Complaint - S & S Quarries, Inc. (Attachment 6). Mr. Larsen stated the Commission signed Notice of Formal Complaint #2700 for S & S Quarries, Inc., at its November 17, 2004 meeting. The Formal Complaint was in response to the company's failure to abate two Notices of Violation. Following receipt of the Notice of Formal Complaint by the company on December 2, 2004, the staff received a written request from the company that a hearing be held. This request was received within the 15-day allowed time frame. The staff therefore recommends that the Commission grant the hearing and that the matter of the hearing be referred to the Administrative Hearing Commission to review the Formal Complaint listed above.

Mr. Mohammadi made the motion to accept the staff's recommendation to grant a hearing for S & S Quarries, Inc. Dr. Haddock seconded; motion carried unanimously.

Formal Complaint - Colonial Limestone (Attachment 7). Mr. Larsen stated a Notice of Violation was issued to the operator in October 2004 for his failure to establish sediment control, thereby allowing siltation to occur from land affected by surface mining onto adjacent lands. The abatement date for the violation was November 12, 2004. Upon inspection of the site conducted on December 14, 2004, it was noted that the violation had not been abated and that sediment was still documented as leaving the permit area. Therefore, the staff recommends that, as all regulatory time frames for appeal of the Notice of Violation have expired and that the operator has failed to establish appropriate

sediment control and prevent off-site sedimentation as required to abate the violation, that the Commission (1) sign the Notice of Formal Complaint for failure to abate the Notice of Violation; and (2) notify the operator that a Formal Complaint has been filed against him and that he has 15 days to request a hearing or abate the Notice of violation.

Mr. Duley made the motion that the Commission sign the Notice of Formal Complaint and notify the permittee that a Formal Complaint has been filed. Dr. Haddock seconded; motion carried unanimously.

BOND RELEASES

Coal: (Attachment 8)

Mr. Hall noted the Office of Surface Mining (OSM) processed these bond releases for the State of Missouri. OSM has made the determination that all areas meet Missouri's requirements for the release of liability being requested by the respective companies.

Associated Electric Coop., Inc., NEMO Mine, Permit 1982-01, PP-04-05: This release request is for Phase I and Phase II release on 5.4 acres, a Phase II only request on 36 acres, and a Complete/Undisturbed release request on 0.6 acre for a release amount of \$12,300.00.

Associated Electric Coop., Inc., NEMO Mine, Permit 1984-08, PP-04-06: This release request is for Phase I and Phase II release on 51.9 acres and a Complete/Undisturbed release request on 20.1 acres. Three acres within the release area were never bonded and are included in the release area. The total release amount requested is \$154,050.00.

Associated Electric Coop., Inc., NEMO Mine, Permit 1988-01, PP-03-11: This release request is for Phase II and Phase III release on 45 acres for a total release amount requested is \$22,500.00. As a note, Phase III release is the final release of all liability by the Land Reclamation Commission.

Continental Coal, Inc., Panther Creek Mine, Permit 1999-01, PP-04-08: This release request is for Phase I release on 281.5 acres and a Complete/Undisturbed release request on 22.5 acres, for a total release amount of \$643,250.00.

Mr. Hall stated it is therefore recommended that the Commission approve the above bond release requests for Associated Electric Coop., Inc., NEMO Mine, and the Continental Coal, Inc., Panther Creek Mine as presented.

Dr. Haddock made the motion that the Commission approve the above bond release requests as presented for Associated Electric Coop., Inc, NEMO Mine, and for Continental Coal, Inc., Panther Creek Mine. Mr. Duley seconded; motion carried unanimously.

OTHER

Administrative Hearing Rules (Attachment 9). Mr. Coen stated these rules were also drafted by the Commissioners Core Work Group. The various commissions within the Department have a variety of procedures for how hearings are to be conducted. In some cases, each hearing may define itself for how it will be conducted just by the motions that were made and decisions that were made. So, there was not anything to lead both sides through a hearing process. The Attorney General's Office, Department of Natural Resources commissioners, and attorneys representing the public drafted these rules. Then each commission or program for the commission simply had to fill in the name of the commission and give a respective rule citation number. Mr. Coen stated he has done that for the Land Reclamation Commission. The rules have gone through the introductory Department review and been approved and received legal review by the Land Reclamation Commission's Attorney General's representative. This set of rules simply gives all parties the benefit of knowing exactly what they will need to do and how they will need to do it to participate in a hearing that is ordered by the Commission. Everyone involved in this process felt this was a very good thing to do. This way, there should be no surprises on how hearings are conducted. There are no questions about how hearings are conducted. It is a very good road map for how you participate in a hearing. It is not expected that these rules will cost anyone anything. Any time there is a hearing, there is a cost. These rules provide some orderliness to the process. Mr. Coen stated he needed the Commission's vote to approve that he take the rulemaking through the formal process to get it into the State rulemaking.

Dr. Haddock asked how a hearing officer is selected?

Mr. Coen stated there is more than one process and there is a choice. For instance, by statute, the Commission could conduct the hearing themselves. Also, one Commissioner could be appointed to conduct the hearing. Several years ago, it was recommended that the Administrative Hearing Commission be used. They are currently backlogged and are not taking new cases. Also, there are approximately ten attorneys on a list who have consented to be independent hearing officers. Once one of these persons is appointed as a hearing officer in a case, that person will then conduct the hearing on the Commission's behalf.

Mr. Mohammadi noted that regarding the list of attorneys, both parties of the issue decide by process of elimination who they want as the hearing officer.

Dr. Haddock made the motion that Mr. Coen be allowed to start the process of developing these rulemakings for hearings and requests for hearings. Mr. Mohammadi seconded; motion carried unanimously.

Comments From the Public

There were no comments from the public.

Closed Session. Dr. Haddock made the motion that the Land Reclamation Commission meet in Closed Session at 8:30 a.m. on March 24, 2005, for the purpose of discussing personnel actions and legal actions, causes of actions, or litigation as provided for in Section 610.021, RSMo. Mr. Duley seconded; motion carried unanimously.

Adjournment. Dr. Haddock made the motion the Land Reclamation Commission meeting be adjourned. Mr. Duley seconded; motion carried unanimously. The meeting was adjourned at 11:25 a.m.

Respectfully submitted,

Chairman